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1 UNITED STATES PATENT AND TRADEMARK OFFICE
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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
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8 *Ex parte* CHRISTOPHER WILLIAM PREIST and
9 CLAUDIO BARTOLINI
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12 Appeal 2009-002972
13 Application 10/035,700
14 Technology Center 3600
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17 Decided: March 10, 2010
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20 Before HUBERT C. LORIN, ANTON W. FETTING, and BIBHU R.
21 MOHANTY, *Administrative Patent Judges*.
22 FETTING, *Administrative Patent Judge*.

23 DECISION ON APPEAL
24

STATEMENT OF THE CASE

Christopher William Preist and Claudio Bartolini (Appellants) seek review under 35 U.S.C. § 134 (2002) of a final rejection of claims 1-26, the only claims pending in the application on appeal.

We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION¹

We AFFIRM.

THE INVENTION

The Appellants invented a computer system for allowing negotiation, corresponding computer nodes and communication methods (Specification 1:6-7).

An understanding of the invention can be derived from a reading of exemplary claims 1, 12, 18-19, and 23, which are reproduced below [bracketed matter and some paragraphing added].

1. A computer system for allowing negotiation between a plurality of entities, the computer system comprising:

[1] a computer network having a plurality of computer nodes;

[2] a computer node being arranged to define the negotiation between the entities with a set of negotiation activities;

¹ Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed) and the Examiner's Answer ("Ans.," mailed).

[3] wherein the computer node is operable to implement a plurality of negotiation rule sets defining a plurality of market mechanisms, each rule set constraining the set of negotiation activities to a specific negotiation type and providing a framework for determining an outcome in the negotiation, thereby allowing an entity to select at least one of a plurality of negotiation types to establish the framework, the selected negotiation rule set being used to validate proposals submitted by participants in the negotiation, the computer node matching compatible proposals in accordance with rules defined in the selected negotiation rule set and forming an agreement.

12. A computer node for coupling to a computer system to allow negotiation between a plurality of entities, the computer node comprising:

[1] a processor, the processor being arranged to define the negotiation between the entities with a set of negotiation activities;

[2] wherein the processor is operable to implement a plurality of negotiation rule sets defining a plurality of market mechanisms, each rule set constraining the set of negotiation activities to a specific negotiation type and providing a framework for determining an outcome in the negotiation, thereby allowing an entity to select at least one of a plurality of negotiation types to establish the framework, the selected negotiation rule set being used to validate proposals submitted by participants in the negotiation, the computer node matching compatible proposals in accordance with rules defined in the selected negotiation rule set and forming an agreement.

18. A method for selecting a negotiation type between a plurality of entities via a computer network having a plurality of computer nodes, the method comprising:

[1] defining in a computer node a set of negotiation activities;

[2] allowing an entity to select via the computer node at least one of a plurality of negotiation rule sets defining a plurality of market mechanisms, each rule set constraining the set of negotiation activities to a specific negotiation type and providing a framework for determining an outcome in the negotiation, thereby allowing an entity to select at least one of a plurality of negotiation types to establish the framework, the selected negotiation rule set being used to validate proposals submitted by participants in the negotiation, the computer node matching compatible proposals in accordance with rules defined in the selected negotiation rule set and forming an agreement.

19. A computer system for allowing negotiation between a plurality of entities, the computer system comprising:

[1] a computer network having a plurality of computer nodes;

[2] a computer node being arranged to define the negotiation between the entities with a set of negotiation activities to provide a framework for determining an outcome in the negotiation;

[3] wherein a number of different market mechanisms are definable by different arrangements of negotiation activities, the negotiation activities include a proposal validator for validating a proposal, received from an entity, with an agreement template, a negotiation locale for providing a validated proposal to a proposal compatibility checker for comparing proposals received from the negotiation locale to determine compatibility of received proposals to establish an agreement.

23. A computer node for coupling to a computer system to allow negotiation between a plurality of entities, the computer node comprising:

[1] a processor, the processor being arranged to define the negotiation between the entities with a set of negotiation

activities to provide a framework for determining an outcome in the negotiation;

[2] wherein a number of different market mechanisms are definable by different arrangements of negotiation activities, the negotiation activities include a proposal validator for validating a proposal, received from an entity, with an agreement template, a negotiation locale for providing a validated proposal to a proposal compatibility checker for comparing proposals received from the negotiation locale to determine compatibility of received proposals to establish an agreement.

THE REJECTIONS

The Examiner relies upon the following prior art:

Thiessen	US 5,495,412	Feb. 27, 1996
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Claims 1-26 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Thiessen.

ISSUES

The issue pertinent to this appeal is whether the Examiner erred in rejecting claims 1-26 under 35 U.S.C. § 102(b) as being anticipated by Thiessen, which turns on whether Thiessen describes the feature recited by limitation [3] of claim 1, limitation [2] of claim 12, limitation [2] of claim 18, limitations [2] and [3] of claim 19, and limitations [1] and [2] of claim 23.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to the Prior Art

Thiessen

01. Thiessen is directed to a computer based method and apparatus for assisting multiple parties involved in complex negotiations in reaching an agreement that optimizes the individual and overall benefit to the parties (Thiessen 1:9-13).

02. Thiessen describes an interactive computer-assisted negotiated process support (ICANS) system that includes a plurality of independent computer systems and graphical interfaces for the input and display of information (Thiessen 5:30-33). Each party to the negotiation use the computer systems to input their preferences to each disputed issue (Thiessen 5:41-46). The central computer then processes all of the received information and determines proposed solutions to the disputed issue that will provide an optimal level of both total and individual satisfaction or benefit to the parties (Thiessen 5:51-57). The analysis includes party preferences and permits consideration of any type of continuously valued or discontinuous smooth or kinked, linear or non-linear valued issue (Thiessen 7:9-13). The proposed solutions are then transmitted to each of the parties for review and approval (Thiessen 5:57-59).

03. Each party can input a range of possible decisions values for each disputed issue, such as ranges in continuous numerical values, a series of discrete numerical or linguistic values, yes/no, and on/off values (Thiessen 6:27-32). The system further allows for alternative solutions to the disputed problem, where a tradeoff is specified by a party for the solution (Thiessen 7:46-49).

Facts Related To The Level Of Skill In The Art

04. Neither the Examiner nor the Appellants has addressed the level of ordinary skill in the pertinent art of computer-assisted negotiations. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error ‘where the prior art itself reflects an appropriate level and a need for testimony is not shown’”) (quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985)).

Facts Related To Secondary Considerations

05. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

Anticipation

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art

reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). "When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351 (Fed. Cir. 2001). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

ANALYSIS

Claims 1-26 rejected under 35 U.S.C. § 102(b) as being anticipated by Thiessen

The Appellants first contend that (1) Thiessen fails to describe the feature recited by limitation [3] of claim 1, limitation [2] of claim 12, limitation [2] of claim 18, limitations [2] and [3] of claim 19, and limitations [1] and [2] of claim 23 (App. Br. 8-22 and Reply Br. 3). The Appellants specifically contend that Thiessen fails to describe the ability to select a framework to determine a solution and the ability to select from multiple frameworks (App. Br. 9).

We disagree with the Appellants. The feature described by the respective limitations in claims 1, 12, 18-19, and 23 requires rule sets that define market mechanisms, where each rule set constrains negotiation

activities to a specific negotiation type and provides a framework for determining an outcome. The feature further requires that a party can select a negotiation type to establish a framework that is used for matching and validating possible solutions.

Thiessen describes an interactive negotiation computer system. FF 01. In this system, each party inputs preferred solutions to a disputed problem and the system analyzes all of the input information to determine a solution. FF 02. The analysis includes incorporating the type of disputed issue and all of the party preferences, such as tradeoff alternative solutions and solution ranges. FF 02-03. That is, each party selects preferences that define a set of rules that dictate the framework for which a possible solution can be found.

The ability to handle multiple types of issues and determine a solution based on different types of preferences is an instance of establishing a framework for establishing a solution. As such, Thiessen describes limitation [3] of claim 1, limitation [2] of claim 12, limitation [2] of claim 18, limitations [2] and [3] of claim 19, and limitations [1] and [2] of claim 23.

The Appellants further argue that claims 1, 12, 18-19, and 23 require that an entity could select a rule set corresponding to a double auction or one corresponding to an English auction. App. Br. 10. However, no such limitation is found in the claim language. As such, preference selection need not be limited to a double auction, English auction, or any other specific type of auction and this argument is not found persuasive.

The Appellants even further contend that Thiessen's description of comparing and matching difference proposals is not tantamount to defining a

rule set that defines how the comparing and matching processes should be implemented (App. Br. 11), however, fail to specifically articulate how Thiessen's description of user input preferences towards a possible solution are not the same as defining a rule set used determine a solution. As such, this argument is also not found persuasive.

The Appellants further contend that (2) claims 2-11, 13-17, 20-22, and 24-26 are allowable for the same reasons as claims 1, 12, 19, and 23. App. Br. 12, 15, 20, and 22; Reply Br. 3. The Appellants arguments *supra* were not found persuasive and are not found persuasive here for the same reasons.

CONCLUSIONS OF LAW

The Examiner did not err in rejecting claims 1-26 under 35 U.S.C. § 102(b) as being anticipated by Thiessen.

DECISION

To summarize, our decision is as follows.

- The rejection of claims 1- 26 under 35 U.S.C. § 102(b) as being anticipated by Thiessen is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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